**BEFORE THE APPEALS BOARD**
**FOR THE**
**KANSAS DIVISION OF WORKERS COMPENSATION**

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| **GUADALUPE GARCIA** | ) | |
| Claimant | ) | |
| VS. | ) | |
| | ) | Docket No. 208,671 |
| **NATIONAL BEEF PACKING COMPANY** | ) | |
| Respondent | ) | |
| | ) | |
| AND | ) | |
| | ) | |
| **WAUSAU INSURANCE COMPANIES** | ) | |
| Insurance Carrier | ) | |

## ORDER

Claimant appealed Administrative Law Judge Pamela J. Fuller's September 1, 2000, Decision. The Appeals Board heard oral argument on February 15, 2001.

### APPEARANCES

Claimant appeared by his attorney, Stanley K. Ausemus of Emporia, Kansas. Respondent and its insurance carrier appeared by their attorney, D. Shane Bangerter of Dodge City, Kansas.

### RECORD AND STIPULATIONS

The Appeals Board (Board) has considered the record and has adopted the stipulations listed in the Decision. In addition, at oral argument before the Board, the parties stipulated that Dr. Christopher R. Wilson's functional impairment rating opinion should be considered as admissible evidence even though he utilized the fourth edition instead of the third edition (revised) of the AMA Guides to the Evaluation of Permanent Impairment (AMA Guides).[1]

[1] For the stipulated May 20, 1994 accident date, K.S.A. 44-510e(a)(Furse 1993) requires the percentage of functional impairment "as established by competent medical evidence and based on the third edition of the revised American Medical Association Guidelines for the Evaluation of Physical Impairment, if the impairment is contained therein."

## ISSUES

The Administrative Law Judge awarded claimant a 2 percent permanent partial disability to the left upper extremity including the shoulder.[2] Work disability was not an issue. Additionally, the Administrative Law Judge denied claimant's request for respondent to pay a $3,943.67 medical treatment bill as authorized medical expense.

On appeal, claimant contends the most persuasive and credible medical opinion concerning claimant's functional impairment is Dr. Pedro A. Murati's whole body functional impairment opinion. But, at oral argument before the Appeals Board, claimant agreed the right carpal tunnel syndrome condition found in 1999 was directly related to claimant's diabetic condition and not her work while she was employed by respondent. Dr. Murati's 32 percent functional impairment rating includes a rating for her right carpal tunnel syndrome condition and surgery. Thus, claimant contends her permanent partial general disability award should be based on Dr. Murati's opinion that claimant suffered permanent work injuries to her left upper extremity resulting in a 3 percent whole body functional impairment, cervical spine resulting in a 4 percent whole body functional impairment and lumbosacral spine resulting in a 5 percent whole body functional impairment. Utilizing the Combined Values Chart of the AMA Guides at page 254, those whole body functional impairment ratings combine for a 12 percent whole body functional impairment. Consequently, claimant argues she is entitled to a 12 percent permanent partial general disability award based on this functional impairment rating.

In contrast, the respondent agrees with the ALJ 's award of 2 percent permanent partial disability of claimant's left upper extremity including the shoulder. Respondent argues claimant only proved her left shoulder was injured while she was working for the respondent. Respondent contends claimant failed to prove that any of her other numerous complaints of pain and discomfort were related to her employment. Thus, the respondent requests the Board to affirm the award.

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record, considering the briefs, and hearing the parties' arguments, the Board finds the Decision should be affirmed.

Claimant was seen by numerous physicians either for treating purposes, or examination and evaluation purposes from the stipulated May 20, 1994 accident date through the March 23, 2000 regular hearing. At the regular hearing, claimant alleged she injured her shoulders, neck, arms, hands, and her spinal cord from top to bottom while employed by the respondent. She also alleged she had none of those numerous problems before she went to work for the respondent.

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[2] K.S.A. 44-510d(a)(13)(Furse 1993)

One of the complications that arises in this case is that claimant, in addition to her alleged work related injuries, also has a Type II diabetic condition that she has had a difficult time keeping under control.

After claimant's May 20, 1994, accident where she caught the left sleeve of her smock in the conveyor belt, she was first treated primarily by the company physician, Dr. Kenoyer. At one point, on May 10, 1995, Dr. Kenoyer aspirated a ganglion cyst on claimant's right wrist.

Respondent then referred claimant to physical medicine and rehabilitation physician, Philips R. Mills, M.D., for evaluation of claimant's continuing multiple musculoskeletal problems and complaints. Dr. Mills first saw claimant on April 17, 1996, with complaints of pain and aching in both arms; pins and needles in the shoulders with numbness; stabbing pain in the infraspinous region; pain running down into the wrist; and the worst pain and discomfort in her neck. Dr. Mills' diagnosis was "diffuse body pain which is difficult for me to explain on the basis of the injuries described."

Dr. Mills placed claimant in physical therapy, occupational therapy, prescribed paraffin baths and modalities with range of motion for the shoulder, wrist and fingers.

Dr. Mills saw claimant on five separate occasions between April 17, 1996, and March 12, 1997. The doctor had claimant undergo electroneurodiagnostic testing. The test showed completely normal on the left and indicated old abnormalities of the right median nerve distribution. Dr. Mills finally released claimant with only the suggestion to use ant-inflammatories as needed for pain. He remained unable to explain claimant's diffuse body pain symptoms on the basis of the work injury. Dr. Mills did not express an opinion concerning claimant's permanent functional impairment or permanent restrictions.

After Dr. Mills, respondent referred claimant to orthopaedic surgeon C. Reiff Brown, M.D. located in Great Bend, Kansas. Dr. Brown saw claimant on four occasions May 7, 1997, May 15, 1997, June 12, 1997 and July 10, 1997. He found claimant with complaints "to every area of both upper extremities, back, neck, shoulder, etc., etc." Dr. Brown determined, "I simply cannot relate the condition with this left upper extremity, neck, shoulders, etc., to the work accident that occurred when her frock became entangled in the machinery." He did find a ganglion cyst in the right wrist and from Dr. Mill's records some dysfunction of the right median nerve. Dr. Brown injected claimant's right wrist for treatment of possible carpal tunnel syndrome and the ganglion cyst. Claimant was continued on light work activity.

Claimant was seen again on May 15, 1997, with improvement mostly in the right wrist area. Dr. Brown again injected claimant's right wrist.

On June 12, 1997, Dr. Brown found "this lady's symptoms continue to be grossly confusing." In the hope of finding some source of claimant's multiple complaints, Dr. Brown ordered electromyographic (EMG), and nerve conduction studies (NCS).

The last time Dr. Brown saw claimant was on July 10, 1997. The EMG was entirely normal. The NCS showed some equivocal median nerve signs on the right side, not sufficient to be able to make a firm diagnosis of carpal tunnel syndrome. The doctor concluded he had found no objective evidence of injury. Thus, he was unable, on the basis of the AMA Guides , to assess any permanent impairment or permanent work restrictions. Dr. Brown believed, "There is sufficient evidence of exaggerative behavior present to be able to say with reasonable medical certainty that the underlying cause of the pathology is motivational."

At the claimant's attorney request, she was examined and evaluated by physical medicine and rehabilitation physician Pedro A. Murati, M.D. Dr, Murati saw claimant on three occasions, August 6, 1997, January 28, 1998 and December 7, 1999. The first time Dr. Murati saw the claimant on August 6, 1997, he did not feel claimant had met maximum medical improvement and did not assess a permanent functional impairment rating or permanent restrictions.

Dr. Murati saw claimant again on January 28, 1998. At that time, his diagnostic impression included reflex sympathic dystrophy of the left upper extremity, cervical strain, lumbar sacral strain, ganglion cyst of the right volar wrist, questionable left carpal tunnel syndrome and right shoulder strain. In accordance with the AMA Guides, Third Edition (Revised), he assessed claimant for all of those permanent injuries with a 20 percent whole body functional impairment. He permanently restricted claimant to an eight hour work day of sedentary work only with a 10 pound maximum lift occasionally.

The final time that Dr. Murati saw claimant was on December 7, 1999. By that time, on June 1, 1999, the claimant had undergone a right carpal tunnel release. Including the right carpal tunnel release surgery, Dr. Murati increased his whole body functional impairment rating to 32 percent. His permanent restrictions generally remained the same except he defined the restrictions in more detail.

The only physician to testify in this case was Raymundo Villaneuva, M.D. Dr. Villaneuva conducted NCS/EMG testing of claimant's upper extremities on July 9, 1997. The EMG was normal bilaterally. The NCS showed suggestive evidence of conduction block of the right median nerve. But Dr. Villaneuva testified this constituted a minor change without a specific abnormality finding.

On March 30, 1999, Dr. Villaneuva was again requested to perform NCS/EMG testing of claimant's right hand, shoulder and neck. This time, the NCS showed a complete change for the worse on the right. There was no response to the stimuli, either motor or sensory of the right median nerve. The doctor's diagnosis was severe right carpal tunnel

syndrome without any response. Dr. Villaneuva's opinion was that, because claimant had a diabetic condition and had not worked since the initial July 9, 1997 injury, her present right carpal tunnel syndrome was related to her diabetic condition and not to her employment with respondent.

As a result of the positive nerve conducting testing, on June 1, 1999, Dr. Mohamad, performed a right carpal tunnel release. During that procedure, he found claimant had an old laceration to the right median nerve with a large neuroma. Dr. Mohamad had one of his associate physicians, Dr. Alok Shah assist him and Dr. Shah excised the neuroma and primarily repaired the right median nerve.

On April 14, 1999, the ALJ appointed Christopher R. Wilson, M.D., to conduct an independent medical examination of claimant. Dr. Wilson was requested to evaluate claimant for a permanent impairment rating and permanent restrictions, if any. Dr. Wilson saw claimant on May 15, 1998.

Before the examination, Dr. Wilson had been supplied for review medical records of physicians Dr. C. Reiff Brown, Dr. Mills, and Dr. Murati, all physicians whose records were admitted into evidence in this case either by stipulation or by deposition. Additionally, Dr. Wilson also had Dr. Lawrence R. Blaty's medical report containing the results of his examination of claimant on November 6, 1996 and the medical treatment records of Dr. Garcia. Dr. Blaty's medical report and Dr. Garcia's medical treatment records were not stipulated into this evidentiary record.

Claimant described the work accident of catching her left sleeve in the conveyor belt which pulled her left arm and shoulder. After Dr. Wilson completed a physical examination of claimant, he diagnosed claimant with some degree of joint disease in the fingers unrelated to her employment. He also diagnosed some degree of adhesive capsulitis of the left shoulder. Based on the AMA Guides, Fourth Edition, Dr. Wilson found claimant had a range of motion loss for abduction of the left shoulder and assessed claimant with a 2 percent functional impairment of the left upper extremity. Dr. Wilson found no other objective signs of injury for carpal tunnel syndrome, lumbosacral strain, or cervical strain. Specifically, the doctor made a finding that claimant did not demonstrate any signs to support a diagnosis of reflex sympathic dystrophy as found only by Dr. Murati.

The ALJ found claimant suffered a 2 percent permanent partial disability of the left upper extremity including her shoulder based on the opinion of Dr. Wilson, who was appointed to conduct an independent medical examination of claimant. The Board agrees with that conclusion. The Board concludes, based on the mechanism of claimant's injury and taking into consideration her diabetic condition, the record as a whole supports a permanent work-related injury only to claimant's left upper extremity. The record does not support claimant's allegations that she also suffered permanent injuries to other areas of her body while working for the respondent.

Furthermore, the Board agrees with the ALJ's analysis of the evidence as set forth in the Decision. The Board finds ALJ's Decision sets out findings of fact and conclusions of law that are accurate and supported by the record. It is not necessary to repeat those findings and conclusions in this order. Therefore, the Appeals Board adopts the ALJ's findings and conclusions as its own.

## AWARD

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that Administrative Law Judge Pamela J. Fuller's September 1, 2000, Decision, should be, and is hereby, affirmed.

All authorized medical expenses are ordered paid by the respondent.

The Board adopts all the remaining orders of the ALJ as set forth in the Decision.

**IT IS SO ORDERED.**

Dated this ____ day of April, 2001.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Stanley R. Ausemus, Emporia, KS
D. Shane Bangerter, Dodge City, KS
Pamela J. Fuller, Administrative Law Judge, Garden City, KS
Philip S. Harness, Director